

1 JOHN M. SORICH (CA Bar No.125223)
jsorich@adorno.com
2 S. CHRISTOPHER YOO (CA Bar No. 169442)
cyoo@adorno.com
3 LASHON HARRIS (CA Bar No. 257578)
lharris@adorno.com
4 ADORNO YOSS ALVARADO & SMITH
A Professional Corporation
5 1 MacArthur Place, Suite 200
Santa Ana, California 92707
6 Tel: (714) 852-6800
Fax: (714) 852-6899

7 Attorneys for Defendant
8 U.S. BANK NATIONAL ASSOCIATION,
9 TRUSTEE FOR LEHMAN BROTHERS-
STRUCTURED ASSET INVESTMENT
LOAN TRUST SAIL 2006-BNC3

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

14 WILLIE J. CAUSEY, JR.,
15 Plaintiff,

16 v.

17 U.S. BANK NATIONAL
ASSOCIATION, TRUSTEE FOR
18 LEHMAN BROTHERS-STRUCTURED
ASSET INVESTMENT LOAN TRUST
19 SAIL 2006-BNC3, AND DOES 1-10,

20 Defendants.

CASE NO.: CV08-03460 JHN (CWx)

JUDGE: Hon. Jacqueline H. Nguyen

**STATEMENT OF
UNCONTROVERTED FACTS AND
[PROPOSED] CONCLUSIONS OF
LAW**

**[Concurrently filed with Notice of
Motion and Motion for Summary
Judgment, Evidence in Support of
Motion for Summary Judgment,
Request for Judicial Notice and
[Proposed] Order Granting Motion
For Summary Judgment]**

Date: June 7, 2010
Time: 2:00 p.m.
Place: 740

25 Pursuant to Local Rule 56-1 , defendant U.S. Bank National Association, as
26 trustee for Lehman Brothers-Structured Asset Investment Loan Trust SAIL 2006-
27 BNC3 ("US Bank" or "Defendant") submits the following Statement of
28

Uncontroverted Facts and Conclusions of Law in support of its Motion of Summary Judgment against Willie J. Causey, Jr. ("Plaintiff").

SUMMARY JUDGMENT

For summary judgment in favor of US Bank on the Second Amended Complaint and against Plaintiff, and for costs of suit herein and such other relief as may be just.

Uncontroverted Facts

Supporting Evidence

1. On or about May 17, 2006, Plaintiff obtained a mortgage loan in the sum of \$397,800.00 ("Loan") in connection with the property located at 7492 Whitewood Drive, Fontana, California ("Subject Property").

2. In connection with the Loan, on or about May 18, 2006, Plaintiff executed an Adjustable Rate Balloon Note ("Note") dated May 17, 2006 in the principal sum of \$397,800.00 in favor of Home Loan Lending, Inc. ("Home Loan").

3. The Loan was secured by a deed of trust encumbering the Subject Property that was recorded on or about May 26, 2006 with the San Bernardino County Recorder's Office as instrument number 2006-0362064 ("DOT").

4. The DOT identifies Home

1. Declaration of Thomas E. Reardon, ("Reardon Decl.") ¶ 4.

2. Reardon Decl., ¶ 4, Exhibit "1"; Deposition Transcript of Willie J. Causey ("Plaintiff Depo"), 47:11-23, Exhibit 6.

3. Reardon Decl., ¶ 5, Request for Judicial Notice ("RJN") Exhibit "1"; Deposition Transcript of Willie J. Causey ("Plaintiff Depo"), 47:24-25 – 48:1-6, Exhibit 7.

4. Reardon Decl., ¶ 6, RJN,

1 Loan Lending Inc. as the lender and
2 beneficiary, T.D. Service Company as
3 the trustee, and Plaintiff was the
4 borrower.

Exhibit "1"; Deposition Transcript of
Willie J. Causey ("Plaintiff Depo"),
47:24-25 – 48:1-6, Exhibit 7.

5 5. On or around May 19,
6 2006, an Alonge to the Note was
7 executed wherein Home Loan Lending
8 transferred the note, without recourse to
9 BNC Mortgage, Inc. ("BNC").

5. Reardon Decl., ¶ 7, Exhibit
"2".

10 6. Option One Mortgage Inc.
11 was the initial servicer of the Loan.

6. Reardon Decl., ¶ 8.

12 7. On or around September
13 11, 2006, Chase acquired servicing
14 rights to the Loan.

7. Reardon Decl., ¶ 9.

15 8. Subsequently, an
16 Assignment of Deed of Trust ("First
17 Assignment") was recorded on or about
18 April 12, 2007, with the San Bernardino
19 County Recorder's Office as instrument
20 number 2007-0223867. Pursuant to the
21 First Assignment, all beneficial interest
22 in the DOT was assigned to BNC
23 Mortgage, Inc.

8. Reardon Decl., ¶ 10; RJN
Exhibit "4".

24 9. From January 31, 2007
25 through May 30, 2008, the investor in
26 connection with the securitization of the
27 Loan was Lehman Brothers Bank FSB.
28

9. Reardon Decl., ¶ 11.

10. An Assignment of Deed of Trust ("Second Assignment") was recorded on or about April 12, 2007 with the San Bernardino County Recorder's Office as instrument number 2007-0223868. Under the Second Assignment, BNC Mortgage, Inc. assigned beneficial interest in connection with the DOT to Mortgage Electronic Registration Systems, Inc. as the nominee for BNC ("MERS").

10. Reardon Decl., ¶ 12; RJN, Exhibit 5.

11. An Assignment of Deed of Trust ("Third Assignment") was recorded on or about recorded on or about July 12, 2007 with the San Bernardino County Recorders Office as instrument number 2007-0410271. Pursuant to the Third Assignment, all beneficial interest in the DOT was assigned to U.S. Bank National Association, as trustee for Lehman Brothers-Structured Asset Investment Loan Trust SAIL 2006-BNC3 (previously defined as "US Bank").

11. Reardon Decl., ¶ 13; RJN, Exhibit 6.

11. An Assignment of Deed of Trust ("Fourth Assignment") was recorded on or about July 1, 2008, with

11. Reardon Decl., ¶ 14; RJN, Exhibit 7.

1 the San Bernardino County Recorder's
2 Office as instrument number 2008-
3 0297650. Pursuant to the Fourth
4 Assignment, also indicates that all
5 beneficial interest in the DOT was
6 assigned to US Bank Although there
7 were four assignments of the deed of
8 trust from Home Loan Lending to US
9 Bank from 2006 to 2008, Lehman
10 Brothers (Lehman Brothers was the
11 parent company for BNC) was the
12 investor in connection with the Loan
13 from 2006 to 2008.

14 12. The Loan is currently in
15 default. Since Chase commenced
16 servicing of the Loan, on or around
17 September 11, 2006, Plaintiff has not
18 made any monthly payments towards
19 this obligation.

20 13. A Notice of Default and
21 Election to Sell Under Deed of Trust
22 ("NOD") in connection with the DOT
23 was recorded on or about November 17,
24 2006 with the San Bernardino County
25 Records Office as instrument number
26 2006-0784021. The NOD indicates that
27 as of November 16, 2006, the sum in
28

12. Reardon Decl., ¶ 15,
Exhibit "3"; Plaintiff Depo 90:8-12.

13. Reardon Decl., ¶ 16; RJN,
Exhibit 2.

1 arrears was \$13, 812.02.

2 14 A Substitution of Trustee 14. Reardon Decl., ¶ 17;RJN,
3 ("First Substitution") in connection with Exhibit 3.
4 the DOT was recorded on or about
5 February 8, 2007 with the San
6 Bernardino County Records Office as
7 instrument number 2007-0084034.

8 15. A Substitution of Trustee 15. Reardon Decl., ¶ 18;RJN,
9 ("Second Substitution") in connection Exhibit 7.
10 with the DOT was recorded on or about
11 on or about May 1, 2008 with the San
12 Bernardino County Records Office as
13 instrument number 2008-0195060.

14 16. A Notice of Trustee's Sale 16. Reardon Decl., ¶ 19;RJN,
15 in connection with the DOT was Exhibit 8.
16 recorded on or about May 12, 2008 with
17 the San Bernardino County Recorder's
18 Office as instrument number 2008-
19 0211975.

20 17. The origination file 17. Reardon Decl., ¶ 20.
21 received by Chase as US Bank's servicer
22 did not include reference to the
23 purported rescission notice sent to Home
24 Lending.

25 18. The origination filed 18. Reardon Decl., ¶ 21,
26 received by Chase as US Bank's servicer Exhibit "4".
27 included a complete and accurate copy
28

1 of the Notice of Right to Cancel
2 executed by Plaintiff.

3 19. The origination file 19. Reardon Decl., ¶ 22,
4 received by Chase as US Bank's servicer Exhibit "5".
5 included a Truth in Lending Disclosure
6 Statement ("TILA") executed by
7 Plaintiff.

8 20. There is no indication from 20. Reardon Decl., ¶ 22,
9 the face of the disclosure statement or Exhibit "5".
10 other assigned documents that the Loan
11 violated TILA or was subject to
12 rescission as the material disclosures
13 appeared on the fact of the document.

14 21. Proceeds from the Loan 21. Reardon Decl., ¶ 23,
15 were used to pay off existing liens on the Exhibit "6".
16 Subject Property in the sum of
17 approximately \$336,736.00.

18 22. Proceeds from the Loan 22. Reardon Decl., ¶ 24,
19 were used to pay county and local taxes Exhibit "6".
20 owed by Plaintiff in addition to a
21 number of other debts.

22 23. Plaintiff received 23. Reardon Decl., ¶ 25,
23 approximately \$7,924.00 in cash from Exhibit "6".
24 the loan proceeds.

25 24. Subsequent to sending a 24. Plaintiff Depo, Exhibit 8.
26 letter to Home Lending regarding his
27 wish to cancel the Loan, Plaintiff sent a
28

1 letter to Home Lending indicating that
 2 he wished to revoke the rescission notice
 3 and requested that the Loan be funded.

4 25. Subsequent to the funding
 5 of the Loan, Plaintiff also had
 6 conversations with BNC wherein BNC
 7 initially disputed Plaintiff's rescission
 8 claim.

9 26. To date, Plaintiff has not
 10 tendered the Loan proceeds.

11 27. BNC brought a federal
 12 action to determine the obligations of
 13 BNC and Causey in connection with
 14 Plaintiff's alleged rescission of the Loan
 15 and obligation to tender under TILA
 16 ("First Action"). Specifically, BNC
 17 alleged:

18 "15. BNC is informed, believes, and
 19 based thereon alleges that, on or about
 20 May 18, 2006, Causey was given a
 21 *Notice of Right to Cancel* pursuant to
 22 §125 of the Federal Truth-in-Lending
 23 Act (15 USC §1635) and Regulation Z
 24 §226.23 (12 CFR §226.23) which
 25 advised him that he was permitted
 26 under the Federal Truth-in-Lending
 27 Act to rescind the Loan transaction
 28

25. Plaintiff Depo, 68:6-19.

26. Reardon Decl, ¶ 26.

27. RJN, Exhibit 10.

1 until midnight of May 22, 2006.

2 14. BNC is informed, believes,
3 and based thereon alleges that, on or
4 about May 22, 2006, Causey exercised
5 his right of rescission and served
6 notice of his rescission pursuant to 15
7 U.S.C. §1635(a) of the Federal Truth-
8 in-Lending Act and Regulation Z
9 §226.23 (12 CFR § 226.23) by
10 forwarding the signed *Notice of Right*
11 *to Cancel* to Home Loan through
12 United States Post Office Priority Mail
13 prior to midnight of May 22, 2006.

14 BNC is further informed, believes, and
15 based thereon alleges that Home Loan
16 received the executed *Notice of Right*
17 *to Cancel* on or about May 23, 2006.

18 A true and correct copy of the
19 executed *Notice of Right to Cancel* is
20 attached hereto as Exhibit "C" and
21 made a part hereof by this reference."
22

23 28. The action, *BNC Mortgage,*
24 *Inc. v. Willie J. Causey, Jr., et al.*, was
25 initially filed on or about July 3, 2007
26 with the United States District Court,
27 Southern District of California, as Case
28

28. RJN, Exhibits 10-11.

1 Number # 07cv1213 BTM (LSP) and
 2 subsequently transferred to the United
 3 States District Court, Central District of
 4 California entitled *BNC Mortgage, Inc.*
 5 *v. Causey, et al.*, United States District
 6 Court Case No. CV07-5387-JFW (SSx)
 7 The Complaint was based on the same
 8 allegations asserted in the SAC ("First
 9 Action").

10 29. BNC requested a judicial
 11 declaration that BNC "and its servicer,
 12 Chase, are not required to reconvey the
 13 Deed of Trust until Chase has received
 14 the Rescission Balance, and (2) that
 15 BNC may enforce the Note and Deed of
 16 Trust if Causey does not pay the
 17 Rescission Balance by a date set by this
 18 Court. Without such a judicial
 19 determination, BNC has no expeditious
 20 or adequate remedy at law, and BNC is,
 21 therefore, entitled to judgment from this
 22 Court, declaring the rights, duties, and
 23 obligations of the parties hereto."

24 30. The BNC Action was
 25 adjudicated through a default judgment
 26 entered against Plaintiff.

27 31. Subsequent to the service of

29. RJN, Exhibits 10, 16-17.

30. RJN, Exhibits 15-18.

31. RJN, Exhibit 15.

1 process on Plaintiff, default was entered
2 on October 30, 2007.

3 32. BNC set forth in its
4 Declaration in support of Default
5 Judgment that:
6 "13. Prior to filing this action,
7 and in accordance with TILA,
8 BNC communicated to Causey
9 that BNC would honor his request
10 for rescission and agreed to
11 reduce the amount owed on the
12 Loan by all finance charges,
13 closing costs and the one payment
14 made by Causey to the sum of
15 \$363,110.95 (the "Rescission
16 Balance").

17 14. BNC has on several
18 occasions informed Causey that
19 BNC would honor his request for
20 rescission of the Loan provided
21 that he tenders the Rescission
22 Balance to BNC.

23 15. To date, Causey has failed
24 and refused to pay the Rescission
25 Balance to BNC."

26 33. Default judgment was
27 entered on December 28, 2007. The
28

32. RJN, Exhibit 16.

33. RJN, Exhibit 17.

1 default judgment entered by the United
 2 States District Court, Central District
 3 specifically provided that: "BNC is not
 4 required to reconvey the Deed of Trust
 5 until BNC has received the Rescission
 6 Balance of \$363,110.95 from Causey by
 7 January 15, 2008."

8 34. Furthermore, the judgment
 9 provided that "[i]f Causey fails to tender
 10 the Rescission Balance to BNC by
 11 January 15, 2008, BNC may enforce the
 12 terms of the Note and Deed of Trust to
 13 collect the remaining amounts due on
 14 the Loan."

15 35. Plaintiff and his current
 16 counsel sought to have the default
 17 judgment set aside based on the same
 18 allegations included in the SAC.

19 36. Plaintiff effectively
 20 admitted that he had received notice of
 21 the First Action but experienced
 22 difficulty locating the "papers."

23 37. The Court denied Plaintiff's
 24 request finding that "despite having
 25 notice that the litigation was moving
 26 forward and that he needed to respond to
 27 the Complaint, Defendant failed to
 28

34. RJN, Exhibit 17.

35. RJN, Exhibit 18.

36. RJN, Exhibit 18,
 Declaration of Plaintiff Willie J. Causey,
 Jr. in Support of Motion to Set Aside
 Default Judgment, ¶ 3:11-14.

37. RJN, Exhibit 19.

1 respond to the Complaint, failed to
 2 request an extension of time to respond
 3 to the Complaint from either the Court
 4 or Plaintiff, or to otherwise notify the
 5 Court or Plaintiff that he intended to
 6 participate and defend himself in this
 7 action.

8 38. Plaintiff further moved the 38. RJN, Exhibit 20.
 9 Court to reconsider its denial to set aside
 10 the default judgment.

11 39. Plaintiff's Motion for 39. RJN, Exhibit 21.
 12 Reconsideration was also denied.

13
 14 Based on the foregoing Uncontroverted Facts, the Court now makes its:

15 **CONCLUSIONS OF LAW**

16 1. The Declaratory Judgment entered by the United States District Court,
 17 Central District of California, in the matter of *BNC Mortgage, Inc. v. Willie J. Causey,*
 18 *Jr., et al.*, in the as Case Number CV07-5387-JFW(SSx) in favor of BNC Mortgage
 19 Inc. against Plaintiff Willie J. Causey ("Plaintiff") on December 28, 2007 collaterally
 20 estops Plaintiff from re-litigating the issue of rescission under the Truth in Lending
 21 Act ("TILA") in this instant action.

22 2. The Court has the right to exercise its equitable power in conditioning
 23 rescission of the subject loan upon the return of the loan proceeds to US Bank under
 24 the TILA before rescission of the Loan is effective.

25 3. Plaintiff is required to tender the Loan proceeds in the sum of
 26 \$363,110.95 to effect rescission of the Loan under TILA.

27 4. A cause of action for damages arising under TILA must be brought
 28 "within one year from the date of the occurrence of the violation." 15 U.S.C. §

1 respond to the Complaint, failed to
 2 request an extension of time to respond
 3 to the Complaint from either the Court
 4 or Plaintiff, or to otherwise notify the
 5 Court or Plaintiff that he intended to
 6 participate and defend himself in this
 7 action.

8 38. Plaintiff further moved the 38. RJN, Exhibit 20.
 9 Court to reconsider its denial to set aside
 10 the default judgment.

11 39. Plaintiff's Motion for 39. RJN, Exhibit 21.
 12 Reconsideration was also denied.

13
 14 Based on the foregoing Uncontroverted Facts, the Court now makes its:

15 CONCLUSIONS OF LAW

16 1. The Declaratory Judgment entered by the United States District Court,
 17 Central District of California, in the matter of *BNC Mortgage, Inc. v. Willie J. Causey,*
 18 *Jr., et al.*, in the as Case Number CV07-5387-JFW(SSx) in favor of BNC Mortgage
 19 Inc. against Plaintiff Willie J. Causey ("Plaintiff") on December 28, 2007 collaterally
 20 estops Plaintiff from re-litigating the issue of rescission under the Truth in Lending
 21 Act ("TILA") in this instant action.

22 2. The Court has the right to exercise its equitable power in conditioning
 23 rescission of the subject loan upon the return of the loan proceeds to US Bank under
 24 the TILA before rescission of the Loan is effective.

25 3. Plaintiff is required to tender the Loan proceeds in the sum of
 26 \$363,110.95 to effect rescission of the Loan under TILA.

27 4. A cause of action for damages arising under TILA must be brought
 28 "within one year from the date of the occurrence of the violation." 15 U.S.C. §

1 1640(e), thus, with respect to Plaintiff's contention that US Bank is liable for the
2 alleged deficient disclosure occurring at the time the loan closed is time barred.

3 5. Plaintiff's claim for the alleged failure to honor Plaintiff's alleged notice
4 of rescission under TILA is also time barred.

5 6. Plaintiff cannot prevail on a claim for TILA violations against US Bank
6 since Plaintiff cannot prove that any violation of TILA is apparent on the face of the
7 disclosure statement.

8 7. No valid claim for relief "Violations of TILA" as requested in the second
9 claim can be asserted against US Bank.

10 8. Plaintiff shall take nothing from Plaintiff.

11 9. Judgment shall be entered in US Bank's favor consistent herewith.

12
13 DATED: _____

14 By: _____
15 HON. JACQUELINE H. NGUYEN
16 UNITED STATES DISTRICT
17 COURT JUDGE
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF ORANGE***Causey v. U.S. Bank National Association, et al.*

USDC Case No.: 08-cv-3460 JHN (CWx)

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is **ADORNO YOSS ALVARADO & SMITH, 1 MacArthur Place, Santa Ana, CA 92707.**

On May 10, 2010, I served the foregoing document described as **STATEMENT OF UNCONTROVERTED FACTS AND [PROPOSED] CONCLUSIONS OF LAW** on the interested parties in this action.

☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY REGULAR MAIL:** I deposited such envelope in the mail at 1 MacArthur Place, Santa Ana, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY THE ACT OF FILING OR SERVICE, THAT THE DOCUMENT WAS PRODUCED ON PAPER PURCHASED AS RECYCLED.

☐ **BY FACSIMILE MACHINE:** I Tele-Faxed a copy of the original document to the above facsimile numbers.

☐ **BY OVERNIGHT MAIL:** I deposited such documents at the Overnite Express or Federal Express Drop Box located at 1 MacArthur Place, Santa Ana, California 92707. The envelope was deposited with delivery fees thereon fully prepaid.

☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on May 10, 2010, at Santa Ana, California.


 Vicki Warren

SERVICE LIST

Willie J. Causey, Jr. v. Chase Home Finance, LLC
USDC Case No. CV08-03460 JHN (CWx)

Nathan Fransen, Esq.
Fransen & Molinaro, LLP
980 Montecito Dr., Suite 206
Corona, CA 92879

(951) 520-9684-telephone
(951) 284-1089-facsimile

Attorney for Plaintiff, Willie J. Causey, Jr.

Matthew C. Tye, Esq.
24 Midsummer
Irvine, CA 92620

(949) 290-9943-telephone

Courtesy copy